

## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SEIU Local 1984 SEA of NH  
Strafford County Chapter 65

Complainant

v.

Strafford County Commissioners

Respondent

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Case No. M-0537-22

Decision No. 2001-037

### PRE-HEARING MEMORANDUM and ORDER

#### BACKGROUND

The SEIU Local 1984, SEA of NH, Strafford County Chapter 65, (hereinafter referred to as the "Union") filed a complaint on February 7, 2001 alleging unfair labor practices on the part of the Strafford County Commissioners (hereinafter referred to as the "County") and its agents as a result of certain actions undertaken by the County that the Union alleges constitute a breach of the parties' collective bargaining agreement (CBA) and a violation of RSA 273-A:5, I (c), (e) and (h). The Union states that the County unilaterally created the new position of "Corporal" for the purpose of discouraging membership in the Union and that the County has refused to bargain with the Union over the wages, hours and conditions of work of these new positions. The parties discussed the title of the new position at the Pre-Hearing Conference and the County clarified that the actual position title was "Floor Supervisor" and that the rank was "Corporal".

The County filed its answer to the complaint on February 26, 2001. In substance, the County replied that it has the authority to create the positions under the "management rights" provision of RSA 273-A:1 XI and under the reservation of management rights clause within the parties' collective bargaining agreement. Further, the County asserts that it has no obligation to bargain with the Union regarding the position of Corporal as it

is a supervisory position and not a position included in the Union bargaining unit. The County asks that the Union's complaint be dismissed.

The matter was initially scheduled for a Pre-Hearing Conference on March 14, 2001 and was continued at the request of the County after it obtained consent from the Union. It was not rescheduled until May 16, 2001 by mutual request of the parties. On March 16, 2001 the County filed an amended answer in the form of a motion that the Union's complaint be dismissed on the basis that the issue should be addressed through a Modification Petition because it is a unit composition issue and does not form the basis for an unfair labor practice complaint. The Amended County response was interpreted as a separate motion to dismiss and is held in abeyance until the scheduled date for hearing.

#### PARTICIPATING REPRESENTATIVES

For the Union: William H. McCann, SEIU, SEA Field Representative

For the District: Gary W. Wulf, Labor Relations Consultant

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the County can create the position of "Floor Supervisor" and the rank of "Corporal"?
2. Whether or not the County, in creating the rank of Corporal and assigning Corporals to the position of Floor Supervisor, discriminated against any member of the bargaining unit or acted to discourage membership in the unit?
3. Whether or not the position of Floor Supervisor is a supervisory position or the rank of Corporal is a supervisory position under the provisions of the Public Employee Labor Relations Act?

#### WITNESSES

For the Union (Complainant):

1. Rodney Woodill, Corrections Officer and Member of the Negotiating team

For the County (Respondent):

1. David Funk, Superintendent
2. Melody Jones, Member of the Negotiating Team

3. Gwen Weisgarber, Corporal
4. Linda Lee, Corporal

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

#### EXHIBITS

For the Association:

1. Collective Bargaining Agreement (CBA), 4/01/00 – 3/31/01
2. Existing Unit Certification
3. Draft of proposed successor CBA dated 8/7/00, Article I – Recognition
4. Union proposals (3) regarding Corporals
  - a. dated 10/23/00
  - b. dated 12/6/00
  - c. resubmission of 12/6/00 version attached to subsequent package
5. Memorandum from Funk to Trundy, dated 8/7/00

For the District:

1. Collective Bargaining Agreement, 4/1/00 – 3/31/01
2. Floor Supervisor job description
3. Organizational chart of the Department of Corrections, dated 8/22/00
4. Legal Case references

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

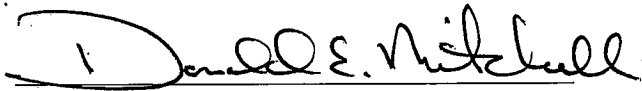
#### LENGTH OF HEARING

The time being set aside for this hearing is one half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than June 14, 2001.

DECISION

1. The parties have identified and exchanged documents relevant to the presentation of their respective cases and each agrees to immediately inform the other party of any subsequent relevant documents not necessarily reserved for impeachment purposes and provide a copy of any such later identified document.
2. The party representatives shall forward any amendments to their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than June 19, 2001 at 4:30 P.M. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
3. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, June 26, 2001

Signed this 16 th day of May, 2001.



Donald E. Mitchell, Esq.  
Hearings Officer